IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8610 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHADRESH ALIAS LALO KANTIBHAI RETIWALA (GOLWALA)

Versus

STATE OF GUJARAT

Appearance:

MR SHAKEEL A QURESHI for Petitioner

Mr.K.C.Shah,A.G.P.for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 20/10/2000

ORAL JUDGEMENT

1. The petitioner, in this petition, has challenged the detention order dated 18.7.2000 passed by the Police Commissioner, Surat City, under Section 3(2) of the Prevention of Anti-social Activities Act (for short

"PASA").

2. Shri Shakil A. Qureshi, learned Counsel for the petitioner and Shri K.C.Shah, learned A.G.P. have been heard. The grounds of detention have been examined.

3. Three materials are shown in the grounds of detention on which the impugned detention order has been passed. The first ground is involvement of the petitioner in a single bootlegging activity in which foreign made liquor worth Rs.21,000/- was captured from the petitioner. A case was registered against the petitioner, but there is no indication in the grounds of detention that at the time of search and seizure the petitioner acted in such a manner that his activity could be branded as activity prejudicial for maintenance of public order.

4. The second material against the petitioner is the statement of one witness who narrated about the incident of 28.5.2000 at 3.00 p.m. The third material is furnished in the statement of another witness who deposed about the incident dated 11.6.2000. Beyond this no other material has been referred in the impugned order.

5. If from the first material it can be held that the petitioner is bootlegger within the meaning of Section 2(b) of the Act he cannot be preventively detained unless his activities are prejudicial for maintenance of public order within the ambit of Section 3(1) and Explanation to Section 3(4) of the Act. Encroachment in the field of disturbance of public order from well defined area of disturbance of law and order is not permissible to authorise the detaining Authority to detain a person under the PASA. It is only when the activities of the petitioner could be branded as prejudicial for maintenance of public order that he could be so detained.

6. Shri K.C.Shah, learned A.G.P. further contended that there was sufficient material before the detaining Authority for passing the impugned order and sufficiency of material cannot be examined by this Court nor the decision of the detaining Authority on the material placed before him can be questioned in this petition. I am, however, unable to agree with this contention. This court in exercise of jurisdiction under Article 226 of the Constitution of India may not make any observation about truthfulness or otherwise of the statements given by two witnesses, but this Court certainly has jurisdiction to look to the face value of the statements of the two witnesses and find out from such statements

whether the incidents narrated by the two witnesses were the incidents where law and order was disturbed or whether the incidents were such where public order was disturbed, namely, even tempo of life of the locality was disturbed or peace and tranquility of the area was disturbed. Even from the face value of these statements of these two witnesses it can be said that those statements are routine type statement without any remarkable improvement yet it can be said that these two statements did not travel beyond the scope of disturbance of law and order and if such was the situation it should have been tackled under the ordinary criminal law and not under the preventive detention law by taking recourse to the order for detention under the PASA. As indicated above a bootlegger can be detained under the PASA only when his activities are found prejudicial for maintenance of public order. From the material on record it can safely be said that the alleged activities of the petitioner were not prejudicial for maintenance of public order. Hence the impugned order of detention under the PASA is illegal. The result, therefore, is that such order cannot be sustained.

7. The petition, therefore, succeeds and is allowed. The impugned order is set aside. The detenu Bhadresh alias Lalo Kantibhai Retiwala (Golwala) shall be released forthwith unless wanted in some other case.

Direct service permitted.

sd/-

Date : October 20, 2000 (D. C. Srivastava, J.)

sas